IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

WA.No. 2982 of 2007

AGAINST THE JUDGEMENT IN WPC.30479/2007 DATED 19/10/2007

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APPELLANT/PETITIONER:

MAHALINGAM & CO.
68, DR. NANJAPPA ROAD,
COIMBATORE - 641 018, REP. BY ITS
MANAGING PARTNER SRI. A. SHANMUGHASUNDARAM.

BY ADVS. BY ADV. SRI.R. L. REMANI
SRI.N.MURALEEDHARAN NAIR &
SRI.V.K.SHAMUSUDHEEN

RESPONDENT/RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY ITS FINANCE SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. COMMISSIONER OF COMMERCIAL TAXES,
PUBLIC OFFICE BUILDING,
THIRUVANANTHAPURAM.

3. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM.

4. THE ASSISTANT COMMISSIONER (ASSESSMENT),
SPECIAL CIRCLE,
THIRUVANANTHAPURAM.

SR. GOVERNMENT PLEADER SRI. MUHAMMED RAFIQ.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, CJ. & K. M. JOSEPH, J.

W. A. NO. 2982 OF 2007

Dated this the 18th December, 2007

JUDGMENT

H.L. DATTU, C.J:

This Writ Appeal arises out of an Order passed by the learned Single Judge in W.P.(C). No.30479/07 dated 19.10.2007.

2. In the course of the Order, we will be referring to the parties as referred in the Writ Petition.

3. Petitioner is a dealer registered under the provisions of the Kerala General Sales Tax Act and the Central Sales Tax Act (for short, the KGST Act & the CST Act). It is engaged in the sale of diesel engines.

4. The Assessing Authority for the assessment years 1994 - 1995, 1995 - 1996 and 1996 - 1997 had initially completed the assessment proceedings under Section 17(3) of the KGST Act.

5. The Revisional Authority being of the opinion that the assessment orders passed by the Assessing Authority are irregular, improper and prejudicial to the interest of the Revenue, had initiated suo motu revisional proceedings invoking the power under Section 35 of the KGST Act and thereby, had modified the orders of assessment passed by the Assessing Authority and had directed the Assessing Authority to levy tax at the rate of 15 per cent on the sales of diesel engines effected by the assessee.

6. The orders so passed by the Revisional Authority were the subject matter of the Appeals before the Tribunal. Before the Tribunal, the assessee was unsuccessful. Thereafter, the assessee had filed a Tax Revision Case before this Court. This Court by Ext.P3 Order has confirmed the orders passed by the Tribunal in T.A. Nos.398/02, 399/02 and 397/02.

7. Aggrieved by the said Order passed by this Court in the Tax Revision Cases, the assessee has carried the matter before the Apex Court and even there also, the assessee has failed in its attempt.

8. Now, the petitioner/assessee is before this Court for a direction to the Assistant Commissioner (Assessment), Special Circle, Thiruvananthapuram not to demand and collect the difference of tax at 5 per cent over and above 10 per cent tax already remitted by the petitioner on the sales of diesel engines in respect of the assessment years 1994 - 1995, 1995 - 1996 and 1996 - 1997 under the provisions of the KGST Act and further to quash the order passed by the Revisional Authority (Ext.P1) dated 2.7.2002 for the reason, that the said order is contrary to the Circular instructions issued by the Board of Revenue, which is binding on the Assessing Authority.

9. The learned Single Judge, taking into consideration that the orders passed by the Assessing Authority has reached finality has only observed in the order that it is open to the petitioner, if so desires, to file a Review Petition, to review the Judgment passed by this Court as well as by the Apex Court.

10. Aggrieved by the Order so passed, petitioner is before us in this Writ Appeal.

11. Admittedly, the orders of assessment passed by the Assessing Authority have been modified by the Revisional Authority, and that order has become final, in the sense, being aggrieved by the orders passed by this Court, the petitioner had carried the matter in Special Leave Petition before the Apex Court and even there, it was unsuccessful. In the orders passed by the Revisional Authority, the Revisional Authority directed the Assessing Authority to quantify the tax liability of the assessee by levying tax at the rate of 15 per cent and not at the rate of 10 per cent as quantified in the orders of assessment passed. Since the order of the Revisional Authority has reached finality, at this stage, the assessee cannot request this Court

to direct the Assessing Authority not to collect the difference of tax of five per cent over and above ten per cent already remitted by the petitioner.

12. In that view of the matter, the relief sought for by the petitioner, in our opinion, was rightly rejected by the learned Single Judge. We do not see any error in the order passed by the learned Single Judge. Therefore, the Writ Appeal requires to be rejected and it is rejected.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE

K.M. JOSEPH,
JUDGE

kbk/DK.